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February 10, 1998

96-262

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: The Rural Telephone Companies' Corrected Opposition to Petition for Rulemaking and Motion for Leave to File Corrected Pleading

Dear Ms. Salas:

Bay Springs Telephone Company, Inc., Crockett Telephone Company, Elkhart Telephone Company, Lexington Telephone Company, National Telephone of Alabama, Inc., Peoples Telephone Company, Inc., Roanoke Telephone Co., Inc., and West Tennessee Telephone Co., Inc., (collectively the "Rural Telephone Companies"), by and through their attorneys, and pursuant to §1.45(c) of the Commission's rules, hereby submit an original and four copies of their corrected Opposition to Petition for Rulemaking ("Opposition") and their Motion for Leave to File Corrected Pleading. The Rural Telephone Companies are filing this motion to include the table of contents page inadvertently omitted from their Opposition filed January 30, 1998.

Sincerely,

Bay Springs Telephone Company, Inc.
Crockett Telephone Company
Elkhart Telephone Company
Lexington Telephone Company
National Telephone of Alabama, Inc.
Peoples Telephone Company, Inc.
Roanoke Telephone Co., Inc.
West Tennessee Telephone Co., Inc.,

By: _____
James U. Troup
Aimee M. Cook

Encl.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
End User Common Line Charges	)	CC Docket No. 95-72

MOTION FOR LEAVE TO FILE CORRECTED PLEADING

Bay Springs Telephone Company, Inc., Crockett Telephone Company, Elkhart Telephone Company, Lexington Telephone Company, National Telephone of Alabama, Inc., Peoples Telephone Company, Inc., Roanoke Telephone Co., Inc., and West Tennessee Telephone Co., Inc., (collectively the "Rural Telephone Companies"), by and through their attorneys, and pursuant to §1.45(c) of the Commission's rules,[1] hereby request that the Commission accept the Rural Telephone Companies' corrected Opposition to Petition for Rulemaking ("Opposition"). The Rural Telephone Companies are filing this motion in order to include the table of contents page inadvertently omitted from their original Opposition, filed January 30, 1998.

[1] 47 C.F.R. § 1.45(c).

The Rural Telephone Companies request that the Commission accept their corrected Opposition in order to ensure "completeness of the record."[2] The proposed correction is clerical in nature, and does not alter the arguments contained in their original Opposition. Thus, the rights of the parties are not adversely affected.[3] Accordingly, Commission acceptance of the Rural Telephone Companies' motion for leave to file Corrected pleading serves the public interest.

Respectfully submitted,

BAY SPRINGS TELEPHONE COMPANY, INC.
CROCKETT TELEPHONE COMPANY
ELKHART TELEPHONE COMPANY
LEXINGTON TELEPHONE COMPANY
NATIONAL TELEPHONE OF ALABAMA, INC.
PEOPLES TELEPHONE COMPANY, INC.
ROANOKE TELEPHONE CO., INC.
WEST TENNESSEE TELEPHONE CO., INC.

By: _____

James U. Troup
Aimee M. Cook
ARTER & HADDEN LLP
1801 K Street, NW
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Washington, DC 20006-1301
(202) 775-7960

Their Attorneys

February 10, 1998
126492.1D

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[2] See Columbia Broadcasting System, Inc., 46 FCC 2d 903, ¶6 (1974).

[3] Id.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 10, 1998, copies of the foregoing Motion for Leave to File Corrected Pleading were mailed, first-class, postage prepaid, to the following:

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Washington, D.C. 20036

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National Retail Federation
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Richard Metzger, Jr., Chief (Via Hand Delivery)
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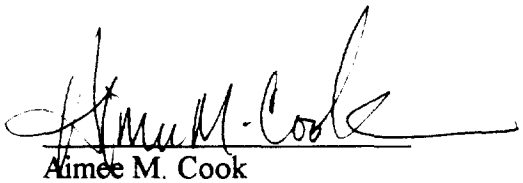

Aimee M. Cook

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

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Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
End User Common Line Charges	)	CC Docket No. 95-72

OPPOSITION TO PETITION FOR RULEMAKING

BAY SPRINGS TELEPHONE COMPANY, INC.
CROCKETT TELEPHONE COMPANY
ELKHART TELEPHONE COMPANY
LEXINGTON TELEPHONE COMPANY
NATIONAL TELEPHONE OF ALABAMA, INC.
PEOPLES TELEPHONE COMPANY, INC.
ROANOKE TELEPHONE CO., INC.
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Their Attorneys

January 30, 1998

TABLE OF CONTENTS

SUMMARY

In their Petition for Rulemaking, the Consumer Federation of America, the International Communications Association and the National Retail Federation (collectively, the "Petitioners") propose that the Commission initiate a rulemaking in order to prescribe interstate access service rates at cost-based levels. It is clear, however, that the access charges collected from interexchange carriers ("IXCs") by rate-of-return local exchange carriers ("LECs"), like the Rural Telephone Companies, are currently cost-based, and therefore, that a rulemaking on this subject is not necessary. The reduction in the Rural Telephone Companies' cost-based access charges proposed by the Petitioners would severely hamper the Rural Telephone Companies' ability to recover the 11.25% reasonable rate-of-return authorized by the Commission. Moreover, the proposed reduction in access charges would likely cause the Rural Telephone Companies' rates-of-return to fall completely outside the "zone of reasonableness" set by the Commission. Such an outcome would be confiscatory, and would therefore be unlawful.

Rather than benefitting consumers, reducing access charges would harm consumers while increasing the profits of IXCs. The Petitioners erroneously assume that end-users, rather than IXCs, pay access charges and therefore that end-users will benefit from lower access service rates. End-users are not, however, obligated to pay access charges. Rather, these charges are paid by the IXCs which order originating and terminating access service. Thus, reductions in access charges would directly benefit IXCs by decreasing the amount they are required to pay for access service, but would not directly benefit end-users. Moreover, there exists no regulation or other requirement to ensure

that IXCs pass their reduction in costs through to end-users of their long-distance telecommunications services. Even if the IXCs do pass the entire reduction in access charges through to end-users, reductions in long distance rates would not necessarily offset completely the increase in local service rates, nor would end-users be aware that one rate is relative to the other.

Rather than benefitting end-users, reducing access charges would likely result in *increased* rates for local service. This would occur because network and service costs not recovered from IXCs through access service rates could only be recovered by LECs by increasing the rates charged to end-users for local service. This is particularly true for rural LECs, like the Rural Telephone Companies, which derive approximately sixty percent of their revenue from federal and state access charges. To the extent the LECs' are not able to earn sufficient revenue, they will find it difficult to continue to provide high quality service and innovative features and functionalities to end-users.

Finally, a decision by the Commission to prescribe lower access service rates to below-cost levels would violate both the Commission's policy, and the national policy set forth in the Telecommunications Act of 1996 (the "1996 Act") of promoting competition, providing for universal service and of ensuring the availability of advanced and innovative services to all Americans at reasonable rates. Accordingly, such action would be arbitrary and capricious in violation of the Administrative Procedures Act, and would therefore be unenforceable.

Thus, it is clear that a regulation prescribing access service rates is unnecessary, and that the public interest is best served by allowing competition, rather than regulation, to determine access service rates for small rural LECs.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
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OPPOSITION TO PETITION FOR RULEMAKING

Bay Springs Telephone Company, Inc., Crockett Telephone Company, Elkhart Telephone Company, Lexington Telephone Company, National Telephone of Alabama, Inc., Peoples Telephone Company, Inc., Roanoke Telephone Co., Inc., and West Tennessee Telephone Co., Inc., (the "Rural Telephone Companies"),[1] by and through their attorneys, hereby oppose the Petition for Rulemaking filed by the Consumer Federation of America, the International Communications Association and the National Retail Federation (collectively, the "Petitioners") in the above-referenced proceeding. The Rural Telephone Companies respectfully urge the Commission to reject the Petitioners' request for a rulemaking concerning the immediate prescription of interstate access service rates .[2]

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[1] The Rural Telephone Companies are small, rural local exchange carriers ("LECs") which operate as "rate-of-return" carriers.

[2] The Rural Telephone Companies' discussion of the impact of the proposed rate prescription is limited to its impact on the Rural Telephone Companies and other rate-of-return carriers. It does not address the effect on large price cap regulated carriers.

I. INTRODUCTION

In their Petition for Rulemaking, the Petitioners propose that the Commission initiate a rulemaking in order to prescribe interstate access service rates at cost-based levels. Contrary to the Petitioners' assertion, however, the access charges collected from interexchange carriers ("IXCs") by rate-of-return local exchange carriers ("LECs") are already cost-based. Thus, any significant reduction in the amount of access charges collected from IXCs would prevent these LECs from recovering a reasonable rate-of-return on their investment, and would therefore be confiscatory. Moreover, although the Petitioners claim to represent telephone service consumers, their proposal to reduce access charges would likely harm the very users they seek to protect, while increasing the profits of IXCs. As explained in greater detail below, there exists no guarantee that reductions in access charges will produce lower rates for end-users; especially residential end-users. Rather, reductions in interstate access charges would place upward pressure on the rates for local service paid by end-users and would hinder the LECs' ability to continue to provide quality service. In addition, such reductions would impede the further development of competition in the access service market and would violate policies concerning universal service.

II. ARGUMENT

A. Reducing the Rural Telephone Companies' Cost-Based Access Service Rates Would Prevent it from Earning its Prescribed Reasonable Rate-of-Return, and Would Therefore be Confiscatory.

The Petitioners urge the Commission to "initiate a rulemaking addressing the immediate prescription of interstate access service rates to cost-based levels."[3] It is clear, however, that the interstate access service rates charged to IXCs by rate-of-return carriers, including the Rural

[3] Petition for Rulemaking at 2.

Telephone Companies, are currently cost-based, and therefore that a rulemaking on this subject would be a waste of Commission resources. Moreover, to the extent the Petitioners suggest a reduction in access charges, such a reduction would likely cause the Rural Telephone Companies' rates-of-return to fall below the "zone of reasonableness" established in the Commission's 1990 Represcription Order.[4] Thus, the Petitioners' rash proposal to require an unjustified reduction in access charges gives no thought to the unlawful consequences of such regulatory action, and must therefore be rejected.

Access charges billed by rate-of-return LECs are designed to reflect the costs incurred by these LECs' in providing exchange access service to IXCs, plus the reasonable return on that investment prescribed by the Commission. In prescribing the current rate-of-return, the Commission established a "zone of reasonableness" within which the prescribed rate-of-return was required to fall. The current "zone of reasonableness" is 10.85%-11.4%; the current reasonable rate-of-return prescribed by the Commission is 11.25%.[5] A rate-of-return becomes confiscatory when it falls below the "zone of reasonableness" set by the Commission.

In accordance with this cost-plus-rate-of-return approach to establishing access charges, rate-of-return LECs must first determine what portion of their regulated expenses and investments are properly allocable to the interstate jurisdiction.[6] They must next apply procedures set forth in Part 69 of the Commission's rules in order to determine the appropriate charges for interstate access

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[4] Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, *Order*, 5 FCC Rcd. 7507, 7508 and 7529 (1990) ("1990 Represcription Order").

[5] 1990 Represcription Order at 7507, 7508 and 7529.

[6] The jurisdictional separations procedures are set forth in Part 36 of the Commission's rules, 47 C.F.R. §§ 36.1-36.741.

services.[7] Finally, they must factor in the reasonable rate-of-return prescribed by the Commission. Thus, the access service rates billed to IXCs by rate-of-return LECs, including the Rural Telephone Companies, recover the costs allocated to the interstate jurisdiction, plus an authorized rate-of-return component prescribed by the Commission. Accordingly, since rate-of-return carriers' access charges are already cost-based, a rulemaking to consider represcription of these charges is not necessary.

The U.S. Supreme Court has held that "the fixing of 'just and reasonable' rates involves a balancing of the investor and the consumer interests."[8] Although it is in the public interest to keep service rates low, in order to attract capital investment it is necessary that "the return to the equity owner . . . be commensurate with returns on investments in other enterprises having corresponding risks."[9] Reducing the Rural Telephone Companies' cost-based access charges would severely hamper their ability to earn the 11.25% reasonable rate-of-return authorized by the Commission. It is, in fact, highly likely that a prescribed reduction in access charges would cause the Rural Telephone Companies' rates-of-return to fall below the "zone of reasonableness" set by the Commission. Such an outcome would be confiscatory, and would therefore be unlawful. Accordingly, the Commission must reject the proposal to initiate a rulemaking for the purpose of such a reckless reduction in interstate access charges.

B. Reducing Access Charges Would Violate the Public Interest

The Petitioners argue that access charges must be reduced for the benefit of local service consumers. Contrary to the notion held by the Petitioners, however, any reduction of access charges

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[7] 47 C.F.R. §§ 69.1-69.502.

[8] FPC v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944).

[9] Id.

would benefit IXCs at the expense of these consumers. It is likely that a decrease in interstate access charges would produce a corresponding increase in the rates for local service paid by end-users, as well as a decrease in the LECs' ability to maintain current levels of service. This will plainly harm consumers, as well as the LECs. A precipitous reduction in access service rates would hinder the development of competition in the access service market. Thus, the Commission should reject the Petition for Rulemaking.

i. Reducing Access Charges Would Not Reduce End-Users' Rates

The Petitioners' argument in favor of reducing access charges demonstrates its failure to comprehend basic principles of LEC cost allocation -- i.e., the Petitioners confuse which LEC customers are obligated to pay the charges related to originating and terminating access service. They assert that "[a]ccess charges must be prescribed to cost-based rates in order to ensure that captive *telephone consumers* are not subjected to bloated rates."[10] This statement is predicated on the erroneous assumption that end-users, rather than IXCs, pay access charges and therefore that end-users will benefit from lower access charge rates. The idea that end-users are obligated to pay access charges is clearly incorrect.

End-users are not obligated to pay access charges. Rather, these charges are paid to LECs by IXCs which order originating and terminating access service. The end-user is not likely to be aware of, or in most cases interested in, the amount that their LEC charges to IXCs to provide this service. Any reduction in access charges would directly benefit IXCs by decreasing the amount they are required to pay to LECs which provide them with access service, but would not produce a similar benefit for end-users.

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[10] Petition for Rulemaking at 3 (emphasis added).

The Petitioners allude to the possibility that a decrease in the access charge rates paid by IXCs will produce a corresponding decrease in long distance rates.[11] However, there exists no regulation or other requirement that IXCs pass their reduction in costs through to end-users of their long-distance telecommunications services. Rather, it is highly likely that, notwithstanding a decrease in access charges, that IXCs would continue to charge end-users the same rates for long distance service, thereby increasing their net profits. Indeed, access charge rates have already been reduced pursuant to the Access Charge Reform Order,[12] but the lowering of access charges has produced no significant reduction in long distance rates.[13] Even if IXCs were to pass the entire reduction in access charges through to end-users, reductions in long distance charges would not necessarily offset completely the increase in local service rates, nor would end-users likely be aware that one rate is relative to the other.

Rather than benefitting end-users, an inconsiderate decision to require LECs to reduce access charges would likely result in *increased* rates for local service. This would occur because network and service costs not recovered from IXCs through access service rates could only be recovered by LECs by increasing the rates charged to end-users for local service. Furthermore, as explained above, the Commission has determined that it is just and reasonable for rate-of-return carriers to earn an

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[11] Petition for Rulemaking at 3.

[12] In re Access Charge Reform, *First Report and Order*, CC Docket No, 96-262; FCC 97-158; 7 CR 1209 (1997) ("Access Charge Reform Order").

[13] IXCs are not subject to the same rate-of-return regulations as the Rural Telephone Companies and other rate of return carriers, and are therefore more likely than rate-of-return carriers to overcharge consumers. For this reason, a more direct and effective method of reducing the rates paid by consumers would be to prescribe IXC rates, rather than target the cost-based access charge rates paid by IXCs.

11.25% return on their investment. LECs rely on this ability to earn a reasonable rate-of-return in order to attract investors and to ensure the continued quality of their service and the viability of their networks. This is particularly true for rural LECs, like the Rural Telephone Companies, which derive approximately sixty percent of their revenue from Federal and state access charges.[14] If IXCs are no longer required to adequately compensate LECs for network access, the LECs will be forced to recover their costs and a reasonable return on their investment through alternate means -- namely, through increased rates for local service. Thus, the ill-advised proposal to mandate illegitimate reductions in access charges would burden consumers with significantly increased local rates, while increasing the profits of IXCs. This clearly violates the public interest.

Moreover, in the Local Competition Order,[15] the Commission made clear that in addition to lowering consumer prices, the Commission sought to "bring new packages of services . . . and increased innovation to American consumers."[16] Contrary to this stated goal, the proposed reduction in access charges would interfere with the LECs' ability to continue to provide high quality service and innovative features and functionalities to end-users. As the Commission observed in the Access Charge Reform Order, cuts in access charges "could prove highly disruptive to business operations,"

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[14] Letter from Roy M. Neel, President and CEO, United States Telephone Association, to Reed E. Hundt, Chairman, Federal Communications Commission (August 25, 1997).

[15] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499 (1996) ("Local Competition Order"), *Order on Reconsideration*, 11 FCC Rcd 13042 (1996), petition for review pending and partial stay granted, sub nom. Iowa Utilities Board v. FCC, 109 F.3d 418 (8th Cir. 1996), vacated in part, Iowa Utilities Board v. FCC, No. 96-3321 (8th Cir. July 18, 1997).

[16] Local Competition Order at 15507 (emphasis added).

and might "disrupt existing services."[17] This is particularly true for the many rural areas and small towns served by rate-of-return LECs. To the extent LECs are not able to make up the shortfall in access service cost recovery through increases in local rates -- a highly unattractive option -- they simply will not have the financial resources necessary to maintain their networks and develop new services.

ii. Reducing Access Charges would be Arbitrary and Capricious in Violation of the Administrative Procedures Act

Reduction of access service rates to below-cost levels would place artificial downward pressure on rates for exchange access service. This would significantly impact competition in the exchange access service market -- with no potential to earn a profit, potential market entrants would have no incentive to compete. Thus, a decision by the Commission to prescribe lower access service rates would violate both the Commission's policy, and the national policy set forth in the Telecommunications Act of 1996 (the "1996 Act") to promote competition. In addition, reduction of access service rates would contravene the Commission's goal of providing for universal service and of ensuring the availability of advanced and innovative services to all Americans at reasonable rates.

The irresponsible reduction in access service rates proposed by the Petitioners would significantly hinder further development of the exchange access service market. As the U.S. Supreme Court has observed, in order for companies in a rate-regulated industry to attract investors, it is essential that the rate regulations allow for "enough revenue not only for operating expenses but also

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[17] Access Charge Reform Order, ¶46.

for the capital costs of the business."[18] As explained above, the uncalled-for lowering of access charges would prevent LECs from earning a reasonable rate-of-return on their investment, and would hamper new market entrants' ability to compete.

Reducing access service rates to below-cost levels would send false, uneconomic market entry signals to potential competitors. The Commission has expressed a policy in favor of cost-based rates, observing that:

> Rates that are held below cost are . . . undesirable because they . . . can distort decision-making by potential competitors concerning entry and investment in the market. Rates in low density markets that are held below cost by regulation can create an illusion of under-investment in communications facilities in those areas . . . . In addition, potential efficient entrants may be deterred by the appearance that incumbents' costs, as reflected in artificially depressed prices, are lower than their own. The existence of a *bona fide* shortage of telephone services cannot be established until prices rise to cost. Only when prices equal or exceed costs will potential entrants be able to evaluate properly the financial benefits of entering these markets.[19]

The Commission has noted that "in an economy increasingly dependent upon information and communications, the dynamic losses caused by investment misdirection can no longer be afforded."[20] Thus, the proposal to reduce access charges to below-cost levels violates the pro-competitive policy set forth in the 1996 Act and related Commission decisions.[21]

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[18] FPC v. Hope Natural Gas Co., 320 U.S. at 603.

[19] In re Price Cap Performance Review for Local Exchange Carriers, 11 FCC Rcd. 858, 872 (1995).

[20] In re MTS and WATS Market Structure, *Third Report and Order*, 93 F.C.C. 2d 241, 275-276 (1983).

[21] See Access Charge Reform Order at ¶44.

The proposed reduction in access service rates also violates the Commission's policies concerning universal service. These policies are designed to ensure "the delivery of affordable telecommunications service to all Americans."[22] Contrary to this goal, reduction of access charges would threaten the continued availability of affordable basic service and in particular would jeopardize the ability of rural LECs such as the Rural Telephone Companies to provide service to their customers. As explained above, rural telephone companies derive approximately sixty percent of their revenue from federal and state access charges. Accordingly, a reduction in access service rates would significantly impair rural LECs' ability to earn their authorized rate-of-return. This would, in turn, force rural LECs to raise local service rates. Increased rates would force some rural customers to disconnect service, thereby contravening the goals set forth in the USF Order. Moreover, even where state commissions permit rural LECs to increase their local service rates, they are not likely to be able to raise these rates to levels sufficient to offset access charge revenue losses. Thus, provision of service to rural areas would decline and the principles of universal service would effectively be abandoned.

Rural LECs serve primarily residential customers. On average, business customers comprise only eighteen percent of rural telephone companies' customer base.[23] For this reason, rural service areas are not likely to attract a significant number of competitive LECs ("CLECs"), which makes the continued viability of incumbent rural LECs all the more essential. To the extent CLECs do provide

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[22] In re Federal-State Joint Board on Universal Service, *Report and Order*, 12 FCC Rcd. 8776, 8780 (1997).

[23] Letter from Roy M. Neel, President and CEO, United States Telephone Association, to Reed E. Hundt, Chairman, Federal Communications Commission (August 25, 1997)

service to rural service areas, such service provision is likely to hinder, rather than promote, universal service goals.

Ensuring incumbent rural LECs' ability to continue to provide local service to rural areas is vital. CLECs offering local service in a rural market will likely ignore residential customers in favor of targeting revenue-generating business customers. If access charges are reduced, such cream-skimming will produce disastrous results. The loss of essential access charge revenue and business customers of local service would place pressure on incumbent rural LECs to raise local service rates for residential consumers. If the incumbent rural LEC loses even one business customer, it would be forced to raise rates for local service. This would allow the CLECs to continue to skim revenue-producing customers, which would force the incumbent LEC to continue to raise prices.[24] CLECs would most likely not offer service to high-cost customers, nor would they be required to do so. Taken to its logical extreme, once the incumbent LEC loses all revenue-producing customers, its rates would be so high that its few remaining high-cost customers would be unable to afford basic service from the incumbent LEC, and would be unable to obtain basic service from the CLEC. This outcome is clearly in direct contravention of universal service principles.

A decision to reduce access charges would also violate §254(b)(2) of the Communications Act of 1934, as amended (the "Act"),[25] which directs the Commission to ensure "[a]ccess to advanced telecommunications and information services . . . in all regions of the Nation." As explained above, reducing access charges would render network maintenance and basic service provision virtually

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[24] This loss of incumbent rural LECs' customers to CLECs would be spurred by the loss of goodwill resulting from the combination of higher rates and lower service quality caused by reducing access charges.

[25] 47 U.S.C. § 254(b)(2).

impossible. Rural LECs simply will not be able to provide the advanced telecommunications and information services called for under the Act in the absence of revenue currently generated through access charges. Accordingly, action by the Commission that reduces access charges so that LECs are prevented from earning a reasonable return on their investment would contravene this universal service goal.

A decision by the Commission to prescribe significantly lower access service rates would violate the Commission's goals of promoting competition, protecting universal service and ensuring the availability of advanced and innovative services at reasonable rates. Actions by an agency which are contrary to the stated goals of that agency are deemed to be "arbitrary and capricious." Such actions violate the Administrative Procedures Act ("APA"), and are therefore unenforceable.[26] Thus, a decision by the Commission to reduce access service rates heedless of the consequences described above would constitute arbitrary and capricious action in violation of the APA, and would accordingly be unenforceable.

Access charges have already been reduced pursuant to the Access Charge Reform Order and, as explained above, it seems clear that further reduction is neither necessary nor desirable. However, to the extent adjustment of access charges may at some point be necessary, the Commission should allow the market to adjust access charges, rather than imposing unnecessary additional regulation on small rate-of-return LECs. As the Commission observed in the Access Charge Reform Order, "emerging competition will provide a more accurate means of . . . moving access prices to economically sustainable levels."[27] In promulgating the 1996 Act, Congress expected the

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[26] 5 U.S.C.§ 706.

[27] Access Charge Reform Order at ¶44.

Commission to rely increasingly on competitive market forces to keep prices low. Recently, Chairman Kennard indicated that the Commission may pursue Congress' market-based approach, and rely on the "competitive powers unleashed by the 1996 Act, "[28] rather than on regulation, to make any necessary changes to access service rates. In a speech delivered to the Organization for the Promotion and Advancement of Small Telephone Companies, Chairman Kennard noted that many states do not regulate small telephone companies, and that "notwithstanding this lack of state oversight, local rates appear relatively low and stable and we don't see widespread deterioration of service."[29] Thus, it is clear that the public interest is best served by allowing competition, rather than regulation, to determine access service rates for small rural LECs.

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[28] Id at ¶46.

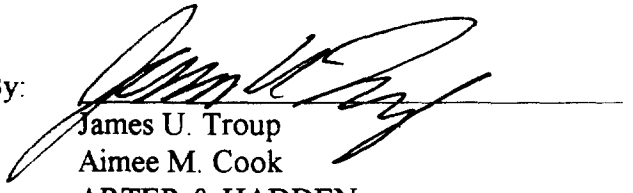
[29] Chairman William Kennard, Address before the Organization for the Promotion and Advancement of Small Telephone Companies (January 12, 1998).

III. CONCLUSION

For the reasons set forth above, the Rural Telephone Companies respectfully urge the Commission to deny the Petitioners' ill-advised request for a rulemaking to prescribe interstate access service rates.

Respectfully submitted,

BAY SPRINGS TELEPHONE COMPANY, INC.
CROCKETT TELEPHONE COMPANY
ELKHART TELEPHONE COMPANY
LEXINGTON TELEPHONE COMPANY
NATIONAL TELEPHONE OF ALABAMA, INC.
PEOPLES TELEPHONE COMPANY, INC.
ROANOKE TELEPHONE CO., INC.
WEST TENNESSEE TELEPHONE CO., INC.

By: 

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Their Attorneys

January 30, 1998

123910.1D

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 30, 1998, copies of the foregoing Opposition to Petition for Rulemaking were mailed, first-class, postage prepaid, to the following:

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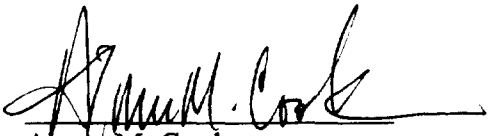

Aimee M. Cook